

REMARKS

[0002] Applicant respectfully requests entry of the following remarks and reconsideration of the subject application. Applicant respectfully requests entry of the amendments herein. The remarks and amendments should be entered under 37 CFR. § 1.116 as they place the application in better form for appeal, or for resolution on the merits.

[0003] Applicant respectfully requests reconsideration and allowance of all of the claims of the application. Claims 1-21 are presently pending. Claims 10-18 are amended herein. No claims are withdrawn or cancelled herein. No new claims are added herein.

Statement of Substance of Interview

[0004] The Examiner graciously talked with me—the undersigned representative for the Applicant—on May 23, 2008. Applicant greatly appreciates the Examiner’s willingness to talk. Such willingness is invaluable to both of us in our common goal of an expedited prosecution of this patent application.

[0005] During the interview, we discussed § 101 rejections, the 1.131 declaration, and distinctions from the cited references, namely Goodisman and Introduction to Windows Peer-to-Peer Networking (hereinafter “IWP2P”). Without conceding the propriety of the rejections and in the interest of expediting prosecution, I also proposed several possible clarifying amendments.

[0006] The Examiner was receptive to the proposals, and I understood the Examiner to indicate that upon submittal of the formal response herein an updated search would be necessary.

[0007] Applicant herein amends the claims in the manner discussed during the interview. Accordingly, Applicant submits that the pending claims are allowable over the cited references of record for at least the reasons discussed during the interview.

Formal Request for an Interview

[0008] If the Examiner's reply to this communication is anything other than allowance of all pending claims, then I formally request an interview with the Examiner. I encourage the Examiner to call me—the undersigned representative for the Applicant—so that we can discuss this matter so as to resolve any outstanding issues quickly and efficiently over the phone.

[0009] Please contact me to schedule a date and time for a telephone interview that is most convenient for both of us. While email works great for me, I welcome your call as well. My contact information may be found on the last page of this response.

Claim Amendments

[0010] Without conceding the propriety of the rejections herein and in the interest of expediting prosecution, Applicant amends claims 10-18 herein. Applicant amends claims to clarify claimed features. Such amendments are made to expedite prosecution and to more quickly identify allowable subject matter. Such amendments are merely intended to clarify the claimed features, and should not be construed as further limiting the claimed invention in response to the cited references.

[0011] Claim 10-17 are amended to clarify compliance with 35 USC § 101. Support for further amendments of claims 10 and 18 can be found at least at paragraph [0030] of the specification.

Formal Matters

Claims

[0012] The Examiner objects to claims 10-16 as potentially encompassing non-statutory subject matter. Herein, Applicant amends these claims, as shown above, to correct the informalities noted by the Examiner.

Substantive Matters

Claim Rejections under § 101

[0013] Claims 10-16 are rejected under 35 U.S.C. § 101. Applicant respectfully traverses this rejection. Furthermore, in light of the amendments presented herein, Applicant respectfully submits that these claims comply with the patentability requirements of §101 and that the §101 rejections should be withdrawn. Applicant further asserts that these claims are allowable. Accordingly, Applicant asks the Examiner to withdraw these rejections.

[0014] If the Examiner maintains the rejection of these claims, then Applicant requests additional guidance as to what is necessary to overcome the rejection.

Request for Reconsideration of Previously Submitted Declaration under 37 CFR 1.131

[0015] Applicant previously submitted a declaration under 37 CFR 1.131, with evidence establishing a reduction to practice prior to the effective date of IWP2P, July 23, 2003. Thus, Applicant requested that IWP2P be removed as a reference, and the § 103 rejections of the claims be withdrawn.

[0016] The declaration was submitted in response to the Non-Final Office Action dated 03/13/2007. The Examiner subsequently issued a Final Office Action dated 12/28/2007, in which, in part, the Examiner stated:

37 CFR 1.131 Declaration regarding Prior Invention

The Affidavit filed on 09/24/2007 under 37 C.F.R. 1.131 has been considered but is ineffective to overcome the 35 U.S.C. 103(a) rejection over Goodisman (US 6,330,006 B1) in view of IWP2P.

Applicant is attempting to establish priority of invention by showing conception and actual reduction to practice of the invention prior to the effective date of the IWP2P reference.

Applicant has submitted a declaration along with redacted portions of a "Patent Pre-disclosure Document" as the sole exhibit allegedly indicating the "fact" that the inventor conceived and actually reduced the subject matter of the instant application to practice before the effective date of the reference IWP2P.

As will be explained in detail below, the affidavit and supporting exhibit are not sufficient to prove either conception or reduction to practice.

GENERAL CONSIDERATIONS

The affidavit or declaration and exhibits must clearly explain which facts or data applicant is relying on to show completion of his or her invention prior to the particular date. Vague and general statements in broad terms about what the exhibits describe along with a general assertion that the exhibits describe a reduction to practice "amounts essentially to mere pleading, unsupported by proof or a showing of facts" and, thus, does not satisfy the requirements of 37 CFR 1.131(b). In re Borkowski, 505 F.2d 713, 184 USPQ 29 (CCPA 1974). **Applicant must give a clear explanation of the exhibits pointing out exactly what facts are established and relied on by applicant.** 505 F.2d at 718-19, 184 USPQ at 33. See also In re Harry, 333 F.2d 920, 142 USPQ 164 (CCPA 1964) (Affidavit "asserts that facts exist but does not tell what they are or when they occurred."). (MPEP 715.07)

The declaration does not even contain any vague and general statements in broad terms about what the exhibits describe, let alone attempting to provide any explanation whatsoever pointing out exactly what facts are established and relied on by the applicant. Therefore, the general assertion that the exhibits describe a reduction to practice "amounts essentially to mere pleading, unsupported by proof or a showing of facts" and, thus, does not satisfy the requirements of 37 CFR 1.131(b). Thus applicant has not met his burden of clearly showing how the submitted evidence supports either conception or actual reduction to practice of the invention.

[0017] Below is an excerpt from the MPEP, which is the same portion of the MPEP cited by the Examiner:

715.07 Facts and Documentary Evidence [R-3]

I. GENERAL REQUIREMENTS

The essential thing to be shown under 37 CFR 1.131 is priority of invention and this may be done by any satisfactory evidence of the fact. FACTS, not conclusions, must be alleged. Evidence in the form of exhibits may accompany the affidavit or declaration. Each exhibit relied upon should be specifically referred to in the affidavit or declaration, in terms of what it is relied upon to show. For example, the allegations of fact might be supported by submitting as evidence one or more of the following:

- (A) attached sketches;
- (B) attached blueprints;
- (C) attached photographs;
- (D) attached reproductions of notebook entries;
- (E) an accompanying model;

(F) attached supporting statements by witnesses, where verbal disclosures are the evidence relied upon. *Ex parte Ovshinsky*, 10 USPQ2d 1075 (Bd. Pat. App. & Inter. 1989);

(G) testimony given in an interference. Where interference testimony is used, the applicant must point out which parts of the testimony are being relied on; examiners cannot be expected to search the entire interference record for the evidence. *Ex parte Homan*, 1905 C.D. 288 (Comm'r Pat. 1905);

(H) Disclosure documents (MPEP § 1706) may be used as documentary evidence of conception.

[0018] The above-cited portion of the MPEP states that, “Each exhibit relied upon should be specifically referred to in the affidavit or declaration, in terms of what it is relied upon to show.” The previously submitted declaration states:

Attached to this declaration is evidence (redacted portions of a “Patent Pre-disclosure Document”) documenting that the invention was conceived February 26, 2002, and reduced to practice August 25, 2002, which predates the January 2003 publication date reflected on the cited publication “Introduction to Windows Peer-to-Peer Networking.”

[0019] As stated in the MPEP, “Each exhibit relied upon should be specifically referred to in the affidavit or declaration, in terms of what it is relied upon to show.” As shown above, the declaration states (with emphasis added):

Attached to this declaration is evidence (redacted portions of a “Patent Pre-disclosure Document”) documenting that the invention was conceived February 26, 2002, and reduced to practice August 25, 2002, which predates the January 2003 publication date reflected on the cited publication “Introduction to Windows Peer-to-Peer Networking.”

[0020] As evidenced by the underlined portions of the declaration shown above, the evidence, the “Patent Pre-disclosure Document” is “specifically referred to ... in terms of what it is relied upon to show.”

[0021] With reference to the Examiner’s statement that, “Applicant must give a clear explanation of the exhibits pointing out exactly what facts are established and relied on by applicant. 505 F.2d at 718-19, 184 USPQ at 33.” Applicant respectfully submits that such an explanation is provided in the declaration. That is, the declaration states, the “evidence (redacted portions of a “Patent Pre-disclosure Document”) documenting that the invention was conceived February 26, 2002, and reduced to practice August 25, 2002.”

[0022] Furthermore, the Examiner states that the Affidavit, “asserts that facts exist but does not tell what they are or when they occurred.” Applicant respectfully disagrees. The declaration clearly states what the facts are (e.g., evidence (redacted portions of a “Patent Pre-disclosure Document”) documenting that the invention was conceived February 26, 2002, and reduced to practice August 25, 2002, which predates the publication date reflected on the cited publication “Introduction to Windows Peer-to-Peer Networking).

[0023] Additionally, Applicant includes a more detailed description of the evidence, below, which Applicant contends should not be required.

[0024] The Declaration refers to a “Patent Pre-disclosure Document” which the Examiner has indicated is insufficient to show conception or reduction to practice. The “Patent Pre-disclosure Document” comprises a disclosure packet that was prepared to assist the Applicant’s representative in preparing the subject patent application. Pages 1 and 2 were prepared by the inventor in preparation for an invention disclosure meeting with Applicant’s representative. The third page is an “Administrative summary for ‘Peer-to-Peer Data Binding’” which illustrates the represented disclosure occurring in the normal course of business. Further details of the “Administrative summary” include the date of the disclosure meeting and both MS and OC docket numbers corresponding to those included in the original filing of the subject patent application.

[0025] In the submitted “Patent Pre-disclosure Document,” page 2 indicates that the invention was conceived February 26, 2002 and that it was reduced to practice August 25, 2002. Furthermore, page 2 includes a diagram, which upon the subject patent application being filed was represented via Figures 2A and 2B. Page 1 also includes a brief summary of the invention that states that the invention:

... allows users to listen to shared playlist of songs together. When one user adds a song to the playlist, that song should be added, in the same position, to every other member's playlist. All changes to the playlist state (e.g. indicating the current song, removing a song, etc.) should be reflected on every peer machine.

[The invention] allows users to view a shared album of photos together. When one user adds a photo [to] the album, that photo should be added, in the same position, to every other member's album, etc.

The current invention solves this problem by implementing generalized UI widgets (e.g. Label, ListBox, Button, Image) that can be bound via COM interfaces (e.g. INetgenCollection/DNetgenCollectionEvents) to a peer-to-peer data provider (a graph). When the UI element changes the state of the data source object, the data is propagated to every member of the group by having each member forward this information to all of its neighbors. (A sends the information to B and C. B sends to C and D. C sends to B and E. D sends to F and E. E sends to D and F). Nodes that receive duplicate information (one copy from each neighbor) simply discard the duplicates and do not forward them. The data source object for each neighbor notifies their corresponding UI widgets of a change in the shared data and the UI widgets update themselves accordingly.

[0026] Applicant submits that the "Patent Pre-disclosure Document" describes these describes these claimed elements. Specifically, regarding the first element of claim 1 ("binding a display object on a first of the plurality of machines to a data source object on the first machine, the display object corresponding to a user interface element, the data source object comprising data usable by the display object for constructing the user

interface element”), page 1 describes features of the invention. This description states, in part, “[t]he current invention ... implement[s] generalized UI widgets ... bound via COM interfaces ... to a peer-to-peer data provider (a graph).”

[0027] Regarding the second element of claim 1 (“notifying the display object by the data source object that a change in the data source object has occurred, the change in the data source object being in accordance with a change in the user interface of a second of the plurality of peer machines within the peer-to-peer network”), the description of page 1 states, in part, “[w]hen the UI element changes the state of the data source object, the data is propagated to every member of the group by having each member forward this information to all of its neighbors.”

[0028] Regarding the third element of claim 1 (“retrieving information representative of the changed data source object by the display object from the data source object”), the description of page 1 states, in part, “[t]he data source object for each neighbor notifies their corresponding UI widgets of a change in the shared data.”

[0029] Regarding the fourth element of claim 1 (“conforming the user interface element to reflect the changed data source object”), the description of page 1 states, in part, “the UI widgets update themselves accordingly.”

[0030] During the above discussed Examiner Interview, the Examiner indicated that the evidence was insufficient to describe dependent claim 3. However, as illustrated above, independent claim 1, from which claim 3 depends is fully described. Thus, Applicant submits that at least by virtue of its dependency from claim 1, claim 3 is also supported.

[0031] Accordingly, Applicant submits that the declaration filed under 37 C.F.R. 1.131 to overcome the IWP2P reference should appropriately be reconsidered at least based on the above explanation.

Claim Rejections under § 103

[0032] The Examiner rejects claims 1-21 under § 103. Applicant respectfully traverses the rejections. For the reasons set forth below, the Examiner has not made a prima facie case showing that the rejected claims are obvious.

[0033] Furthermore, Applicant disputes the Examiner's statements relying on purported "applicant admitted prior art" at least because Applicant maintains that the instant invention was completed before the effective date of the IWP2P reference.

[0034] Accordingly, Applicant respectfully requests that the § 103 rejections be withdrawn and the case be passed along to issuance.

[0035] The Examiner's rejections are based upon the following references in combination:

- **Goodisman:** *Goodisman, et al.*, US Patent No. 6,330,006 (issued Dec. 11, 2001);
- **IWP2P:** *Introduction to Windows Peer-to-Peer Networking*, (Published July 23, 2003); and

- **Reilly:** Reilly, David, *Object Persistence Made Easy*, (09/22/1999, [online], [retrieved 02/26/2007], retrieved from http://webdevelopersjournal.com/articles/object_persistence.html); and
- **Eriksson:** J. Eriksson, M. Faloutsos, and S. Krishnamurthy, *PeerNet: Pushing Peer-to-Peer Down the Stack* in Proceedings of International Workshop on Peer-to-Peer Systems (IPTPS), Berkeley, CA, USA, Feb 2003, [online], [retrieved on 02/26/2007], retrieved from <http://iptps03.cs.berkeley.edu/final-papers/peernet.pdf>).

Overview of the Application

[0036] The Application describes a technology for synchronizing user interfaces on peer machines in a peer-to-peer network. In particular, data binding is used to ensure that data sources and corresponding UI objects remain mutually synchronized. Further, in an embodiment of the invention, object persistence is utilized to transform changed data source objects to a data stream for propagation via a peer graph record structure. Furthermore, in an embodiment of the invention, a standard interface is then used to create and load the propagated object on a peer machine. Thus the invention is directed in embodiments to an N to N replicated data store and presentation.

Cited References

[0037] The Examiner cites Goodisman as the primary reference in the obviousness-based rejections. The Examiner cites IWP2P as the secondary reference and alternately Reilly or Eriksson as tertiary references in the obviousness-based rejections.

Goodisman

[0038] Goodisman describes a technology to minimize errors by application programmers by guaranteeing that data is bound properly to user interface objects to make certain that the user interface accurately reflects changes in the data being represented. To assist programmers, a design tool is used to specify an interface object's binding properties. Data binding properties define an association between an interface object (like a button or table row) and underlying data for synchronization purposes. A binding manager manages the bindings. Further, the binding manager registers with the program code (instances of object classes) that manages the bound interface objects and represented data. The binding manager processes a change request when a change occurs to an interface object or the underlying data to ensure that bound interface objects and data sources remain synchronized.

IWP2P

[0039] IWP2P is an article providing an overview of peer-to-peer networking, networking, including a description of peer-to-peer networking scenarios. The paper also describes the goals of Windows Peer-to-Peer Networking and how it works; including

detailed descriptions of IPv6 and NAT traversal, peer discovery and name resolution, graphing, grouping, replicated storage, and searching.

Obviousness Rejections

Lack of *Prima Facie* Case of Obviousness (MPEP § 2142)

[0040] Applicant disagrees with the Examiner's obviousness rejections. Arguments presented herein point to various aspects of the record to demonstrate that all of the criteria set forth for making a prima facie case have not been met.

Based upon Goodman in view of IWP2P

[0041] The Examiner rejects claims 1, 2, 8-11, 17, 18, 20, and 21 under 35 U.S.C. § 103(a) as being unpatentable over Goodman in view of IWP2P. Applicant respectfully traverses the rejection of these claims and asks the Examiner to withdraw the rejection of these claims at least based on the previously submitted 1.131 Declaration and the additional explanation provided, above.

Independent Claims 1, 8, 10, 17, 18, and 20

[0042] Applicant submits that at least because the cited combination of Goodman Goodman in view of IWP2P relies upon a reference invalid as applied to the instant claims, the combination does not teach or suggest each of the elements recited in these claims:

Independent Claims 10 and 18

[0043] Furthermore, Applicant submits that none of the purported combinations of references teach or suggest each of the following elements recited in claim 10, for example (in part, as amended, and with emphasis added):

- notifying the display object by the data source object that a change in the data source object has occurred, the change in the data source object being in accordance with a change in the user interface of a second of the plurality of peer machines within the peer-to-peer network, wherein the change in the data source object comprises an **update to at least one of a plurality of fields in the data source object**

[0044] Rather, IWP2P requires that a record be replaced with a record containing a higher version number, rather than changing the record's contents during an "update." (p. 13, "Graphing: ... To perform these functions [flooding], each flooded record that is identified by a globally unique identifier (GUID), has an increasing version number or sequence number, and is further qualified by age or a status." This restriction of IWP2P is contrary to the instant application. Additionally, none of Goodisman, Reilly, nor Eriksson remedy this deficiency.

[0045] As shown above, the combination of references does not teach or suggest all of the elements and features of this claim. Accordingly, Applicant asks the Examiner to withdraw the rejection of this claim.

[0046] Independent claim 18 contains at least one element similar to that discussed above regarding claim 10. Thus, Applicant submits that claim 18 is allowable for at least reasons similar to claim 10.

Dependent Claims 2-7, 9, 11-16, 19, and 21

[0047] These claims each ultimately depend upon one of independent claims 1, 8, 10, 18, and 20. As discussed above, claims 1, 8, 10, 18, and 20 are allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable. Additionally, some or all of these claims may also be allowable for additional independent reasons.

Dependent Claims

[0048] In addition to its own merits, each dependent claim is allowable for the same reasons that its base claim is allowable. Applicant requests that the Examiner withdraw the rejection of each dependent claim where its base claim is allowable.

Conclusion

[0049] All pending claims are in condition for allowance. Applicant respectfully requests reconsideration and prompt issuance of the application. If any issues remain that prevent issuance of this application, the **Examiner is urged to contact me before issuing a subsequent Action.** Please call or email me at your convenience.

Respectfully Submitted,

Lee & Hayes, PLLC
Representatives for Applicant

/Bea Koempel-Thomas, #58,213/ Dated: 05/28/2008

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